

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

United States of America,)	
)	
)	4:02-cr-1280-CWH
)	
vs.)	
)	
Warren E. Moore,)	ORDER
)	
Defendant.)	
_____)	

On September 22, 2003, the defendant pleaded guilty to possession with intent to distribute cocaine in violation of 21 U.S.C. §841(a)(1) and (b). On January 21, 2004, the defendant was sentenced to a term of 108 months imprisonment followed by 6 years supervised release. On January 23, 2004, the defendant filed a notice of appeal. On February 15, 2007, the Fourth Circuit Court of Appeals vacated the defendant's sentence and remanded for resentencing consistent with United States v. Booker, 543 U.S. 220 (2005) and United States v. Hughes, 401 F.3d 540 (4th Cir. 2005). On April 4, 2007, the defendant was resentenced and the original sentence was imposed. On May 11, 2007, judgment was entered. On June 22, 2007, the defendant gave his *pro se* notice of appeal to prison officials. A prisoner's notice of appeal is deemed filed when it is given to prison officials. Houston v. Lack, 487 U.S. 266, 276 (1988).

On July 11, 2007, trial counsel filed a motion for an extension of time to appeal final judgment on the defendant's behalf. In this motion, the defendant claims that he requested that counsel file an appeal and that counsel informed him that an appeal would be filed after judgment was entered.

The defendant's judgment was entered on May 11, 2007. "In a criminal case, a

defendant's notice of appeal must be filed in the district court within 10 days of the entry of judgment." United States v. Little, 392 F.3d 671, 680 (4th Cir. 2004)(*citing* Fed. R. App. P. 4(b)(1)(a)). Therefore the defendant's notice of appeal was due on May 25, 2007.

Rule 4(b)(4) of the Federal Rules of Appellate Procedure provides "[u]pon a finding of excusable neglect or good cause, the district court may . . . extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time prescribed by this Rule 4(b)." The Court holds that the defendant has shown good cause because in a motion signed by his trial counsel the defendant alleges that he requested that counsel file an appeal and that counsel informed him that an appeal would be filed after judgment was entered. The defendant filed his notice of appeal on June 22, 2007, 28 days after the expiration of the time prescribed by Rule 4(b).

The Court therefore grants the defendant's motion to extend the time to appeal.

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "C. Weston Houck". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

**C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE**

July 13, 2007
Charleston, South Carolina